



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TRG

Docket No: 1962-99

27 April 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 w/attachments
(2) Case Summary
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Navy filed enclosure (1) with this Board requesting, in effect, that his period of lost time be reduced.

2. The Board, consisting of Mr. Zsalman, Mr. Brezna and Mr. Adams, reviewed Petitioner's allegations of error and injustice on 25 April 2000 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Enclosure (1) was filed in a timely manner.

c. On 12 April 1996 Petitioner was arrested by civil authorities on two counts of malicious wounding and two counts of use of a firearm. He was released the next day and returned to his duties in the Navy and served in an excellent manner for over 11 months. On 17 March 1997 he appeared in court and pled guilty to two counts of the lesser charge of unlawful wounding, and a finding on the firearm charges was deferred. However, the case was continued pending a presentence report. On 8 May 1997 he was sentenced to five years confinement on each of the unlawful wounding charges and the two firearms charges were dropped. However, it was ordered that the period of confinement in excess of 14 months be suspended. Petitioner was incarcerated that same day and remained in that status until his discharge. He was discharged under other than honorable conditions due to the civil

conviction on 4 September 1997.

d. On 5 September 1997 a NAVPERS P601-7R was prepared to document Petitioner's lost time for which he would not be paid. The form states that he should be charged for lost time from 0655 12 April 1997 to 0800 to 0800, 4 September 1997, a period of 142 days. How the command arrived at the 12 April 1997 date is unclear, but it may relate to his initial arrest on 12 April 1996 and the change in the year may be a typographical error.

e. Petitioner has submitted evidence showing that he was incarcerated in the city jail beginning on 8 May 1997 and remained there until he was transferred to a state prison.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. The Board notes that Petitioner was present for duty until he was incarcerated on 8 May 1997. Therefore, the Board concludes that the record should be corrected to show that he was charged lost time from the date he was incarcerated by civil authorities, 8 May 1997, until his discharge on 4 September 1997, vice the beginning date of 12 April 1997 now of record.

The Board further concludes that this Report of Proceedings should be filed in Petitioner's naval record so that all future reviewers will understand the actual period of lost time.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was charged with lost time from 8 May to 4 September 1997, vice the period from 12 April to 4 September 1997 now of record.

b. That this Report of Proceedings be filed in Petitioner's naval record.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

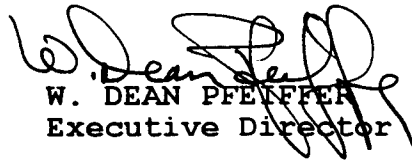
ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of

Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.


W. DEAN PFEIFFER
Executive Director